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A NEW IDEA IN COMPANY LAW - ONE PERSON COMPANY

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Abstract:

With the enactment of the Companies Act, of 2013, some new ideas have been introduced into India's Corporate Legal System which weren't part of the erstwhile old Companies Act, of 1956, one such concept introduced by the Act is the concept of "One Person Company", which means an individual can now constitute a company. Earlier, if you wanted to set up a private company, you needed at least one other person because the law mandated a minimum of two shareholders. The object behind the incorporation of this concept is to promote entrepreneurship. It will help the entrepreneurs to access certain facilities like bank loans, thorough access to the market as a separate entity, and a legal shield for their business. The Act provided single persons with full freedom to contribute to the economic activities of India. This article tries to exhibit an outline of the progressive new idea of One Person Company as presented by the Companies Act, 2013. At the heart of this article lies an attempt by the author to understand: (i) the basic concept of the One Person Policy, (ii) the need for the emergence of the concept, (iii) to appreciate the merits and point out the demerits and deficiencies of the concept.

The concept of One Person Company was introduced in the Indian company law regime by the enactment of the Companies Act, 2013 (the 'Act'). This new concept was in furtherance of the objective of creating the necessary environment for the present global corporate structure in India. The main aim behind the incorporation of such a concept is to encourage entrepreneurs who wish to set up a microeconomic industry but are in search of a business structure with less effort, time, and monetary resource consumption in legal conformity. Under the Company Law 1956, there was a complete bar on an individual to start a company, the only option left to him was to have a sole proprietorship, as the erstwhile law required at least two people to form a company.

One Person Company is defined under Sub-section 62 of Section 2 of the Act. It defines One Person Company as "a company which has only one person as a member", where all the legal and financial liabilities are limited to the company and not its members. Only naturally born Indian who is a resident of India (i.e. have stayed for at least 182 days during the immediate preceding financial year) can incorporate One Person Company.

This concept of One Person Company is similar to the existing concept of Sole proprietorship. However, the ills of Sole- proprietorship which were generally faced by the proprietors were removed by this concept. The important feature of One Person's Company

is that the risks mitigated are limited to the extent of the value of shares held by such a person in the company. This will help the entrepreneurs to take the risks of doing business without bothering litigations and liabilities getting attached to their personal assets.

Rationale behind the Concept:

The origin of the concept of One Person Company can be traced back to the international corporate regimes of the U.K., Singapore, China, and other European countries and the recommendations of the "Expert Committee on Law" supervised by Dr. J.J. Irani in 2005. The reason why this concept was introduced can be best understood from the summary of the report of the committee as mentioned herein below:

"With the increasing use of information technology and computers and the emergence of the service sector, it is time that the entrepreneurial capabilities of the people are given an outlet for participation in economic activity. Such economic activity may take place through the creation of an economic person in the form of a company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the marketplace should do it through an association of persons. We feel that it is possible for individuals to operate in the economic domain and contribute effectively. To facilitate this, the Committee recommends that the law should recognize the formation of a single-person economic entity in the form of a 'One Person Company'. Such an entity may be provided with a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy, and resources on procedural matters."

Features of One Person Company:

The concept of One Person Company is mentioned in the various provisions of the Act, and through an analysis of these provisions, the Salient features of the One Person Company can be inferred:

- It is a company that has only one person as a member.
- Unless excluded by the Act, it has all the characteristics of a private company.
- It has a minimum paid-up share capital of INR one lakh.
- One Person shall have a minimum of One Director; and a maximum of 15 directors.

- One Person Company need not hold annual general meetings every year.
- It is not mandatory for One Person Company to include Cash Flow Statement in the financial statements.
- One Person Company is required to be mentioned in brackets below the name of such name of the company, wherever its name is printed, affixed, or engraved.
- Shareholder of a One Person Company acts as the first director until the Company appoints a director.

Advantages of One Person Company:

One of the most crucial questions is, why would a person prefer a company over a proprietorship? To answer this question, we have to look at the rationale behind this concept which is to provide an individual with the benefits of incorporation while functioning like a Sole Proprietor. The following are the advantages that make the title of the company more desired than that of proprietorship:

Independent Corporate existence: The Company has its own existence separate from that of its Director and Shareholder, and the same will apply to One Person Company too… This principle originated from the Case of Salomon v. Salomon & Co Ltd. Company forms a distinct legal personality from its members, thus a company is a person in law. In the case of T.R. Pratt v. E.D. Sassoon & Co. Ltd, the Bombay High Court has held that "Under the law, an incorporated company is a different entity, and although the entire share maybe practically controlled by one person, in law a company is a distinct entity."

Therefore, there is a difference between One Person Company and Sole Proprietorship. In sole Proprietorship, there is no separation between a person and his business.

Limited liability: As mentioned above, One Person Company has its own separate legal identity and thereby limits the liability of the entrepreneur to the extent of paid subscription money. Limited liability is considered the most precious characteristic of the Corporation. President Eliot of Harvard regarded limited liability as "the corporation's most precious characteristic" and "by far the most effective legal invention made in the nineteenth century." Therefore, this concept of One Person Company encourages single shareholders to participate in the economy by limiting their liabilities. In contrast to the above, in Sole Proprietorship there is no limitation on liability.

Perpetual Succession: In the Person Company nomination of a successor by the Director is mandatory, and he will be the sole member in case of death or disability of the Director. Therefore, unlike Sole Proprietorship, the death or disability of a sole member would not dissolve the company. Members may come and go but the company can go on forever.

Compliances: Unlike private companies, Person Companies have not been subject to various procedural formalities such as Annual General Meetings, General Meetings Extraordinary General Meetings, etc. The exemption from these formalities makes the operation of One Person Company convenient and trouble-free.

Deficiencies of One Person Company:

Restriction on Nris:

The objective behind the introduction of the concept of One Person Company was to boost the economic growth of the country by promoting entrepreneurship. However, this seems to be an irony because only a naturally born Indian who is also a resident of India shall be eligible to incorporate a Person Company. On one hand, this concept encourages small entrepreneurs, and other hands it discourages Foreign Direct Investment by disallowing foreign companies and multinational companies to incorporate their subsidiaries in India as a Person Company.

Mandatory Requirement to Appoint Nominee:

The very purpose of the One Person Company concept was to enable the single person to enter into a business venture alone without wasting his time and energy looking for a partner. This entire purpose has been defeated due to the legal mandate, which requires the shareholder to appoint a nominee, who shall, in the event of the subscriber's death or his incapacity to contract becomes a member of the company at the time of incorporation of the One Person Company. This creates procedural trouble for the subscriber such as looking for a nominee, obtaining his consent, etc.

Perpetual Succession:

According to the concept of perpetual succession, the nominee whose name has been mentioned will become the sole member of the company in the event of death or disability of the subscriber. This does not sound good for the future of the company because the person who is not involved in day to day operation of the company, would not be able to handle the business properly and this will lead to the winding up of the company.

Tax Obligation:

In the context of tax, a sole proprietor remains in a better position than One Person Company. The concept of Person Companies is not recognized under the Income Tax Act and therefore is taxed equally to the private companies. As per the Income Tax Act, of 1961, the tax rate for private companies is 30%, while for sole proprietors tax rate depends upon their income. Thus, from the taxation point of view, it puts a heavy burden on the One Person's Company.

Suggestions and Conclusion:

The concept of One Person Company has been proven to be a boon for individual entrepreneurs. It has provided a speedy mechanism where a person can single-handedly incorporate himself into a company rather than wasting his time, energy, and resources in finding a partner. One Person Company is beneficial for both regulators as well as market players. From the perspective of regulators, organizing the unorganized sector of proprietorship will make the regulation of these entities convenient and effective. On the other hand, from the perspective of market players, the status of a private limited company will not only limit the liability of sole entrepreneurs but will also provide access to market players to various credit and loan facilities.

Despite this remarkable feature introduced in the Companies Act, 2013, there are certain shortcomings that must be addressed in order to achieve the true intent of the legislature. A few changes which are immediately required to be introduced to make the concept better are as follows:

1. The position that only Indian citizen who is resident of India can form One Person Company should be relaxed and even foreign companies and NRIs should be allowed to incorporate One Person Company.
2. The Distinction between the legal person and the natural person should be removed with respect

to the incorporation of One Person's Company.

3. Income Tax Act, of 1961 should recognize the concept of One Person Company in order to encourage more entrepreneurs to incorporate companies.
4. The procedural requirements which a person has to comply with in order to incorporate his company as One Person Company should be relaxed, so as to encourage more and more people to use the benefit there under.

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